

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr. Appeal 510 of 2000

Reserved on: 14.08.2007

Decided on : August 16,2007

State of H P Appellant

Versus

Ravi Kant & another Respondents

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?¹

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For the appellant Mr. V K Verma, Additional Advocate General.

For the Respondent Mr.R. K. Gautam, Senior Advocate, assisted by Mr Anurag Sharma, Advocate.

Surinder Singh, J.

The respondents were put on trial under section 324 with the aid of Section 34 of the Indian Penal Code for allegedly causing simple injuries with sharp edged weapon on the person of Kapil Dev PW. On the conclusion of the trial, the Additional Chief Judicial Magistrate (I), Kangra acquitted them, by extending benefit of doubt.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ? yes.*

2. The State has felt aggrieved by the impugned judgment aforesaid and has filed the instant appeal on the grounds that the trial court did not appreciate the statement of the witnesses, more specifically of the injured in its right perspective and has set unrealistic standards to appreciate the prosecution evidence.

3. Heard and went through the record.

4. In brief, the prosecution case has been that on 29.06.1998 at about 9.30 P.M. when the injured Kapil Dev(PW-1) was going to his house, respondents met him on the way and according to him respondent Ravi Kant attacked him with a **Darat** on his head, causing injury. On this he raised hue and cry, his mother came to the spot and took him to her house. A report Ex.PW-1/A was lodged on 30.06.1998 and the delay has not been explained. Said injured was medically examined by Doctor Rubi Bhardwaj (PW-3), who issued the medico-legal-certificate Ex.PW-3/A, revealing 2" incised wound oval shaped injury on the scalp, which was though simple but caused with a sharp-edged weapon and probability of injury was within 12 hours, depth of the wound could not be ascertained but it was not superficial. It is admitted by the injured Kapil Dev that the police post is at a distance of two furlong from his house and on the same night he reached the police post but his report was not recorded whereas the

S.I. Investigating Officer Daulat Ram (PW-7) has stated that the injured reported the matter on 30.06.98 at about 7.50 A.M., on the basis of aforesaid report FIR was lodged and it was thereafter he was medically examined. He has specifically denied the fact of complainant visiting the police post on 29.6.1998 during night. Further complainant has stated that Darat (Ex.P-2) was taken into possession by the police from Ravi Kant. In the cross-examination the complainant has stated that the police asked him to bring two witnesses of the recovery whereas, the Investigating Officer has stated that the Darat was taken into possession at 2.40 P.M. on 19.07.1998 vide recovery memo Ex.PW-1/C. There is over writing on the date, which has not been explained. Another regrettable feature of the case is that in the report the complainant has stated that on hearing his hue and cry, his mother came to the spot but she was not examined to corroborate the version of the injured. He has admitted litigation with the respondents. There is absolutely no evidence of overt act or sharing any common intention by respondent Sudershan. Recovery witness of Darat Vijay Kumar (PW-5) has not supported the case of the prosecution. Dolu Ram (PW-4) has turned hostile with respect of recovery of clothes of the injured. PW-2 Amar Chand, father of the complainant appears to have been introduced in the investigation of the case in lieu of the mother of the

complainant. Initially, it was not the case of the complainant that said Amar Chand was reached there on hearing of his cries. Therefore, his presence as alleged is doubtful. In the cross-examination he has stated that in the close vicinity there is a house of one Bhagwan Dass. Even he was not examined to lend strength to the prosecution case. Admittedly, the respondents have also lodged a report before the SDM regarding the same incident. With respect to the recovery of Darat, he has stated that it was taken in to possession after two months from the date of occurrence. Keeping in view the contradictory evidence and stand taken by the witnesses a reasonable doubt is caste upon the prosecution evidence. The trial court has taken note of most of the aforesaid facts and extended benefit of reasonable doubt to the respondents,

5. It is settled law that in appeal against acquittal, innocence of the accused does not get diluted and if two views are deducible from the record, the benefit of favourable view has to be given to the accused.

6. On the reappraisal of the evidence, I have found that the basis of acquittal recorded by the trial court is borne out from the record and the trial court has rightly extended the benefit of doubt to the respondents. Thus, there appears to be no perversity in

its judgment. Accordingly, the impugned judgment of acquittal is upheld and the appeal is dismissed. The respondents are discharged of the bail bonds, entered upon by them at any stage of the proceedings.

August 16, 2007
(D)

(Surinder Singh), J.